

#### Section 4.14 Names.

(a) Notwithstanding any inference contained herein or prior course of conduct to the contrary, except as expressly provided in the Transitional Trademark License, the Buyer Intellectual Property License or the IP Side Letters, in no event shall Buyer or any of its Affiliates (including without limitation the Acquired Companies) have any right to use, nor shall Buyer or any of its Affiliates (including without limitation the Acquired Companies) use, any of the corporate names, trade names, service marks, logos, designs, acronyms, domain names, vanity telephone numbers or other Proprietary Rights of Seller or any of its Affiliates in any jurisdiction, including without limitation the names and service marks "SAFECO," "SAFECO NOW" and any other name, mark or telephone number containing the word "SAFE" (including, as applicable the corporate or trade names of the Acquired Companies), or any application or registration thereof, owned by, licensed to or used by Seller or any of its Affiliates, or any other name, mark, logo, design, acronym, domain name or vanity telephone number containing the word "SAFE" or that is confusingly similar to the corporate names, trade names, service marks, logos, designs, acronyms, domain names or vanity telephone numbers of Seller or any of its Affiliates. Except as expressly provided in the Transitional Trademark License, as soon as reasonably practicable after the Closing Date, Buyer shall cause the Acquired Companies to change their names, and file the appropriate documents with the relevant governmental agencies to effectuate such change of names, to the extent necessary to remove such corporate names, trade names, service marks, logos or acronyms (i) of Seller and its Affiliates or (ii) containing the word "SAFE." Following the Closing Date, other than as expressly set forth in the Transitional Trademark License, the Buyer Intellectual Property License or the IP Side Letters, no license or other agreement to use any corporate names, trade names, service marks, logos, designs, acronyms, domain names, vanity telephone numbers or other Proprietary Right of Seller or any of its Affiliates shall be deemed to exist between Seller, or any of its Affiliates, and any of the Acquired Companies by operation of law, past practice or otherwise, and any such license or other agreement currently in effect shall terminate at Closing.

(b) The parties hereto acknowledge that any damage caused to Seller or any of its Affiliates by reason of the breach by Buyer or any of its Affiliates of this Section 4.14 would cause irreparable harm that could not be adequately compensated for in monetary damages alone; therefore, each party agrees that, in addition to any other remedies at law or otherwise, Seller and any of its Affiliates shall be entitled to an injunction issued by a court of competent jurisdiction restraining and enjoining any violation by Buyer or any of its Affiliates of this Section 4.14 and Buyer further agrees that it will stipulate to the fact that Seller or any of its Affiliates, as applicable, has been irreparably harmed by such violation and not oppose the granting of such injunctive relief.

Section 4.15 Asset Sale. (a) Seller agrees that prior to Closing, the Acquired Companies will sell to Seller or a third party designated by Seller or on the open market up to \$225 million in Fair Value of the assets (as specified in writing to Seller prior to March 31, 2004) identified on Schedule 4.15 (the "Sold Assets"). Buyer and Seller acknowledge that any and all accounting effect of the asset sales described in this Section 4.15(a) shall be excluded from the calculation of June Adjusted Statutory Book Value for purposes of Section 1.4, regardless of whether such impact would have the effect of increasing or decreasing June Adjusted Statutory Book Value. For the avoidance of doubt, the preceding sentence will be interpreted to mean that June Adjusted Statutory Book Value will be calculated as if the sale of the Sold Assets never occurred.

(b) With regard to the Sold Assets, (i) if the Sale Price of the Sold Assets exceeds the Fair Value of the Sold Assets, then 65% of any excess of (A) the Sale Price of the Sold Assets over (B) the Fair Value of the Sold Assets will be paid by the applicable Acquired Companies to Seller within five (5) Business Days after the sale of all the Sold Assets is completed and (ii) if the Fair Value of the Sold Assets exceeds the Sale Price of the Sold Assets, then 65% of any excess of (A) the Fair Value of the Sold Assets over (B) the Sale Price of the Sold Assets will be paid by Seller to the applicable Acquired Companies within five (5) Business Days after the sale of all the Sold Assets is completed. Buyer and Seller acknowledge that any and all accounting effect of any payment described in this Section 4.15(b) shall be excluded from the calculation of June Adjusted Statutory Book Value for purposes of Section 1.4, regardless of whether such impact would have the effect of increasing or decreasing June Adjusted Statutory Book Value. For the avoidance of doubt, the preceding sentence will be interpreted to mean that June Adjusted Statutory Book Value will be calculated as if no such payment ever occurred. Any intercompany obligations relating to the payments required pursuant to this Section 4.15(b) shall be exempted from the covenant to unwind intercompany obligations set forth in Section 4.13.

Section 4.16 Other Transactions. From the date of this Agreement to the earlier of (i) the termination of this Agreement and (ii) the Closing, none of Seller, any Subsidiary of Seller or any other Affiliate of Seller shall, nor shall they permit any of their respective agents, directors, officers, employees, advisors (including their financial, legal and accounting advisors) or other representatives to, directly or indirectly, encourage, solicit, initiate or participate in discussions or negotiations with, or provide any information or assistance to, or enter into any agreement with, any Person or group (other than Buyer and its representatives), concerning any merger, consolidation, sale of securities, share exchange or any other business combination, reorganization, recapitalization or similar transaction involving the Acquired Companies or any sale, lease, exchange, transfer or other disposition of over 5% of the assets of the Acquired Companies, it being understood that this covenant shall not apply to any securities held in the Investment Portfolio. Without limiting the foregoing, it is understood that any violation of the restrictions set forth in the preceding sentence by any officer, director, stockholder or other representative of Seller, any Subsidiary of Seller or any other Affiliate of Seller, whether or not such person is purporting to act on behalf of Seller, any Subsidiary of Seller, any other affiliate of Seller or otherwise, shall be deemed to be a breach of this Section 4.16 by Seller. From the date of this Agreement to the earlier of (i) the termination of this Agreement and (ii) the Closing, in the event that Seller any Subsidiary of Seller or any other Affiliate of Seller receives a proposal relating to any such transaction, Seller shall promptly notify Buyer of such proposal and deliver a copy of such proposal to Buyer.

Section 4.17 Resignations: On the Closing Date, Seller shall cause to be delivered to Buyer (i) duly signed resignations (from the applicable board of directors), effective immediately after the Closing, of all directors of each Acquired Company and (ii) to the extent requested by Buyer, duly signed resignations of those persons who are interested persons (as that term is defined in the Investment Company Act) of an Investment Adviser Subsidiary and serve as directors or trustees of Registered Investment Companies advised by an Investment Adviser Subsidiary or Registered Separate Accounts maintained by an Insurance Subsidiary, and shall take such other action as is necessary to accomplish the foregoing.

Section 4.18 Further Assurances. From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions (subject to Section 4.3), as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement and the other Transaction Documents. Such actions shall include (i) in the case of Seller and GAC, (A) executing and delivering to Buyer such assignments, deeds, bills of sale, consents and other instruments as Buyer or its counsel may reasonably request as necessary or desirable for such purpose and (B) reasonably cooperating with Buyer in its initial preparation of audited financial statements of the Acquired Companies for Exchange Act filing purposes and (ii) in the case of Buyer, (A) reasonably cooperating with Seller in the initial preparation of the June Financial Statements and (B) using commercially reasonable efforts to facilitate the making of the Excess Capital Dividend.

Section 4.19 No Solicitation.

(a) For a period of three (3) years from the Closing, Seller shall not, and shall cause its Subsidiaries not to, directly or indirectly, solicit for employment or employ any Business Employee, without the prior written consent of Buyer; provided, that: (i) the placing of an advertisement of a position available to a member of the public generally, and the hiring of any Business Employee in response to such an advertisement shall not constitute a breach of this Section 4.19(a); and (ii) this obligation shall not prevent Seller or any of its Subsidiaries from employing, mandating or otherwise engaging any Business Employee (A) whose employment with Buyer or its relevant Subsidiaries has been terminated by Buyer or any of its Subsidiaries or (B) who has resigned from employment with Buyer or any of its Subsidiaries, provided that such employee has not been contacted by or engaged in any discussions with Seller or any of its Subsidiaries regarding employment prior to such employee's notifying his or her employer of his or her intent to resign.

(b) For a period of three (3) years from the Closing, Buyer shall not, and shall cause its Subsidiaries not to, directly or indirectly, solicit for employment or employ any employee of Seller or its Subsidiaries, without the prior written consent of Seller; provided, that: (i) the placing of an advertisement of a position available to a member of the public generally, and the hiring of any employee of Seller or its Subsidiaries in response to such an advertisement shall not constitute a breach of this Section 4.19(b); and (ii) this obligation shall not prevent Buyer or any of its Subsidiaries from employing, mandating or otherwise engaging any employee of Seller or its Subsidiaries (A) whose employment with Seller or its relevant Subsidiaries has been terminated by Seller or any of its Subsidiaries or (B) who has resigned from employment with Seller or any of its Subsidiaries, provided that such employee has not been contacted by or engaged in any discussions with Buyer or any of its Subsidiaries regarding employment prior to such employee's notifying his or her employer of his or her intent to resign.

Section 4.20 Non-Competition.

(a) For a period of five (5) years from the Closing, Seller shall not, and shall cause each of its Affiliates not to, (i) directly or indirectly, develop, market or sell products in the United States similar in type to the Life & Annuity Contracts and the type of products sold by the Investment Adviser Subsidiaries or Broker/Dealer Subsidiaries immediately prior to the Closing Date, (ii) establish in the United States any new business which engages in the activities described in the preceding clause (i) or (iii) license, transfer or otherwise convey in the United States any trademark of Seller or any of its Affiliates used by the Acquired Companies prior to the Closing to any person that has indicated an intention to or is reasonably likely to engage in such activities (the activities described in clauses (i)-(iii), "Competitive Activities").

(b) Notwithstanding anything to the contrary contained in this Section 4.20, Buyer hereby agrees that the foregoing covenant shall not be deemed to be breached as a result of: (i) the development, marketing or sale of products of a type not sold by the Acquired Companies (including the Investment Adviser Subsidiaries and Broker/Dealer Subsidiaries) at the time of the Closing; (ii) Competitive Activities conducted by Talbot Financial Corporation and its subsidiaries at the time of the Closing; (iii) any activities (whether Competitive Activities or otherwise) by any Person or business that merges with or acquires Seller or any of its Affiliates or any interest in either, whether through merger (whether forward, reverse or reverse triangular in structure), stock purchase, asset purchase or otherwise, so long as for the first year following the consummation of any such transaction, the directors of the Seller and its Affiliates (or any Persons designated by the Seller or its Affiliates) do not constitute a majority of the board of directors of the acquirer or the surviving company; (iv) the acquisition by Seller or its Affiliates of any Person or business that is engaged in Competitive Activities, so long as the Competitive Activities accounted for less than 35% of the consolidated revenues of such Person or business for the 12 months prior to such acquisition; or (v) the ownership by Seller or any of its Affiliates of (A) less than an aggregate of 5% of any class of stock of a Person engaged, directly or indirectly, in Competitive Activities; provided, that such stock is listed on a national securities exchange or is quoted on the National Market System of NASDAQ; (B) less than 5% in value of any instrument of indebtedness of a Person engaged, directly or indirectly, in Competitive Activities; or (C) a Person or any interest in a Person that engages, directly or indirectly, in Competitive Activities if such Competitive Activities account for less than 35% of such Person's consolidated annual revenues.

(c) The parties hereto acknowledge that any damage caused to Buyer or any of its Affiliates by reason of the breach by Seller or any of its Affiliates of this Section 4.20 would cause irreparable harm that could not be adequately compensated for in monetary damages alone; therefore, each party agrees that, in addition to any other remedies at law or otherwise, Buyer and any of its Affiliates shall be entitled to an injunction issued by a court of competent jurisdiction restraining and enjoining any violation by Seller or any of its Affiliates of this Section 4.20 and Seller further agrees that it will stipulate to the fact that Buyer or any of its Affiliates, as applicable, has been irreparably harmed by such violation and not oppose the granting of such injunction relief.

Section 4.21 Assignment of Confidentiality Agreements. Prior to or at the Closing, Seller shall cause any confidentiality agreements entered into by Seller or any of its Affiliates since September 1, 2003 relating to the Acquired Companies or any properties, assets, liabilities or activities of any Acquired Company in connection with a sale or disposition that are not agreements to which an Acquired Company is a party, to be assigned to an Acquired Company unless expressly prohibited by the terms of such confidentiality agreement.

Section 4.22 Actions Affecting June Adjusted Statutory Book Value. After the Closing, neither Buyer nor Parent will take or fail to take any action or permit any Acquired Company to take or fail to take any action, in each case for the purpose of either (i) shifting statutory income or surplus from the period before June 30, 2004 to the period following June 30, 2004 or (ii) decreasing statutory income or surplus with the intent of decreasing the June Adjusted Statutory Book Value or decreasing the Closing Consideration to the detriment of Seller.

#### ARTICLE V. CONDITIONS

Section 5.1 Conditions to Each Party's Obligations. The respective obligations of each party to effect the transactions set forth in Section 1.1 shall be subject to the fulfillment or waiver at or prior to the Closing of the following conditions:

(a) no Law, Order or other legal restraint or prohibition enacted, entered, promulgated or enforced by any Governmental Entity (collectively, "Restraints") shall be pending, threatened or in effect challenging or seeking to restrain, prevent or prohibit the consummation of the transactions contemplated in this Agreement;

(b) all material consents, authorizations, orders and approvals of (or filings or registrations with) any Governmental Entity required in connection with the execution, delivery and performance of this Agreement or necessary for the consummation of the transactions contemplated in this Agreement shall have been obtained or made (as the case may be), except for any documents required to be filed after the Closing; and

(c) any waiting period applicable to the transaction set forth in Section 1.1 under the HSR Act shall have expired or been terminated.

Section 5.2 Conditions to Obligation of Parent and Buyer. The obligation of Parent and Buyer to effect the transactions set forth in Section 1.1 shall be subject to the fulfillment or waiver at the Closing of the following additional conditions:

(a) Seller and GAC shall have performed or complied with in all material respects all covenants and obligations that are required to be performed or complied with by them under this Agreement on or prior to the Closing;

(b) each of the representations and warranties of Seller and GAC in this Agreement (disregarding all qualifications and exceptions therein relating to materiality or Material Adverse Effect) shall be true and correct as of the date of this Agreement and as of the Closing Date as if they were made on and as of the Closing Date (other than such representations and warranties that expressly address matters only as of a certain date, which need only be true and correct as of such certain date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect on the Acquired Companies, taken as a whole;

(c) Parent shall have received certificates signed by the chief executive officer and chief financial officer of Seller to the effect of Sections 5.2(a) and (b);

(d) Seller shall have executed and delivered each of the Transaction Documents; and

(e) Parent and Buyer shall have received proceeds from sources of Financing in an amount sufficient to pay the Closing Consideration and to pay all fees and expenses required to be paid by Parent and Buyer in connection with the transactions contemplated in this Agreement and the other Transaction Documents.

Section 5.3 Conditions to Obligation of Seller and GAC. The obligation of Seller and GAC to effect the transactions set forth in Section 1.1 shall be subject to the fulfillment or waiver at the Closing of the following additional conditions:

(a) Parent and Buyer shall have performed or complied with in all material respects all covenants and obligations that are required to be performed or complied with by them under this Agreement on or prior to the Closing;

(b) each of the representations and warranties of Parent and Buyer in this Agreement (disregarding all qualifications and exceptions therein relating to materiality or Material Adverse Effect) shall be true and correct as of the date of this Agreement and as of the Closing Date as if they were made on and as of the Closing Date (other than such representations and warranties that expressly address matters only as of a certain date, which need only be true and correct as of such certain date), except where the failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect on Parent or Buyer;

(c) Seller shall have received a certificate signed by the chief executive officer and chief financial officer of each of Parent and Buyer to the effect of Sections 5.3(a) and (b);

(d) at the Closing Date: (i) at least seventy-five percent (75%) of the members of the Investment Company Boards of any Registered Investment Company which has approved a new investment advisory contract shall not be "interested persons" (as such term is defined in the Investment Company Act) of that Acquired Company Subsidiary that will act as investment adviser to such Investment Companies following the Closing Date, or the Acquired Companies or of any of their Affiliates that was the investment adviser of any such Investment Company immediately preceding the Closing Date; and (ii) the requirements of Section 15(f)(1)(B) of the Investment Company Act shall have been complied with in that no "unfair burden" shall have been imposed on any of the Registered Investment Companies that are management investment companies as a result of this Agreement, the transactions contemplated hereunder, new Investment Company Advisory Agreements or otherwise; and

(e) Parent and/or Buyer, as applicable, shall have executed and delivered each of the Transaction Documents.

## ARTICLE VI. TERMINATION

Section 6.1 Termination. This Agreement may be terminated and the transactions set forth in Section 1.1 contemplated hereby may be abandoned at any time prior to the Closing:

- (a) by the mutual written consent of Parent, Buyer and Seller;
- (b) by Parent, Buyer or Seller, if a court of competent jurisdiction or other Governmental Entity shall have issued an Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions set forth in Section 1.1 and such Order or other action shall have become final and nonappealable;
- (c) by Parent or Buyer, if Seller or GAC shall have materially breached or failed to perform any of their respective representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 5.2(a) or Section 5.2(b) and (B) is incapable of being cured, or is not cured, by Seller or GAC, as applicable, within thirty (30) calendar days following receipt of written notice of such breach or failure to perform from Parent or Buyer;
- (d) by Seller, if Parent or Buyer shall have materially breached or failed to perform any of their respective representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 5.3(a) or Section 5.3(b) and (B) is incapable of being cured, or is not cured, by Parent or Buyer, as applicable, within thirty (30) calendar days following receipt of written notice of such breach or failure to perform from Seller; or
- (e) by Parent or Seller, if the Closing shall not have occurred on or before the nine month anniversary of the date of this Agreement; provided, however, that the right to terminate this Agreement under this Section 6.1(e) shall not be available to any party whose failure to fulfill materially any covenant or obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

Section 6.2 Procedure for and Effect of Termination. In the event that this Agreement is terminated and the transactions set forth in Section 1.1 are abandoned by Parent or Buyer, on the one hand, or by Seller, on the other hand, pursuant to Section 6.1, written notice of such termination and abandonment shall forthwith be given to the other parties and this Agreement shall terminate and the transactions set forth in Section 1.1 shall be abandoned without any further action. If this Agreement is terminated as provided herein, no party hereto shall have any liability or further obligation to any other party under the terms of this Agreement except (i) with respect to the willful breach by any party hereto, and (ii) this Section 6.2, the second sentence of Section 4.2(a), Section 4.5, Article VII and Section 8.5 shall survive the termination of this Agreement.



## ARTICLE VII: INDEMNIFICATION

**Section 7.1 Indemnification by Seller and GAC.** Subject to the limitations set forth in Section 7.3, from and after the Closing, Seller and GAC, jointly and severally, shall indemnify, defend and hold harmless Parent, Buyer, each of their respective Affiliates and each of their respective officers, directors, employees, agents and representatives (the "Buyer Indemnified Parties") from and against any and all claims, losses, damages, liabilities, obligations or expenses, including reasonable legal fees and expenses (collectively, "Losses"), as incurred, payable promptly upon written request, to the extent arising or resulting from or relating to any of the following (except for any items relating to Taxes, which shall be governed exclusively by Section 7.5):

(a) any breach of any representation or warranty of Seller or GAC contained in this Agreement (it being agreed and acknowledged by the parties that for purposes of Parent and Buyer's right to indemnification pursuant to this Section 7.1 the representations and warranties of Seller and GAC (except for the representations and warranties set forth in (i) the second and fourth sentences in Section 2.7(a)(ii), (ii) clause (C) of the first sentence of Section 2.7(a)(iii) and (iii) the next to last sentence of Section 2.22(e)) shall be deemed not qualified by any references therein to materiality generally or to whether or not any breach results or may result in a Material Adverse Effect);

(b) any breach of any covenant of Seller and GAC contained in this Agreement;

(c) any failure by an Investment Adviser Subsidiary or a Registered Investment Company to be, or at any time since their adoption to have been, in compliance with its respective RIC Procedures; or

(d) any failure (i) by an Insurance Subsidiary to disclose in its marketing and sales materials, to the extent required by applicable Law, any of its Financial Intermediary Arrangements or (ii) of any such Financial Intermediary Arrangement to comply, or at any time to have complied, with applicable Law.

**Section 7.2 Indemnification by Parent, Buyer and the Acquired Companies.** Subject to the limitations set forth in Section 7.3, from and after the Closing, Parent, Buyer and the Acquired Companies shall indemnify, defend and hold harmless Seller, GAC, each of their respective Affiliates and each of their respective officers, directors, employees, agents and representatives (the "Seller Indemnified Parties") from and against any and all Losses, as incurred, payable promptly upon written request, to the extent arising or resulting from or relating to any of the following:

(a) any breach of any representation or warranty of Parent or Buyer contained in this Agreement (it being agreed and acknowledged by the parties that for purposes of Seller and GAC's right to indemnification pursuant to this Section 7.2 the representations and warranties of Parent and Buyer shall be deemed not qualified by any references therein to materiality generally or to whether or not any breach results or may result in a Material Adverse Effect); or

(b) any breach of any covenant of Parent or Buyer contained in this Agreement.

Section 7.3     Limitations on Indemnity.

(a) None of the Buyer Indemnified Parties shall be entitled to assert any right to indemnification under Section 7.1(a) until (i) each individual amount of Losses otherwise due the Buyer Indemnified Parties exceeds \$250,000 (the "De Minimis Amount") (provided, that (X) the term "individual amount of Losses" shall mean each individual breach of a particular warranty and not the aggregation of individual breaches of a particular warranty into a single breach (e.g., if Seller failed to disclose five contracts under a particular warranty, and the failure to disclose any one of those contracts would be a breach, then the five contracts together would be considered multiple breaches, of which each such undisclosed contract would be an "individual amount of Loss") and (Y) for purposes of the calculation of the Loss with respect to such individual breach, a series of separate Losses caused by or resulting from the same individual breach shall be aggregated (e.g., if an individual breach causes or results in two separate Losses of \$200,000 each, such Losses shall be aggregated to a sum of \$400,000 for purposes of determining whether the "Loss" with respect to such individual amount is less than \$250,000)) and (ii) the aggregate amount of all the Losses actually suffered by the Buyer Indemnified Parties exceeds 3.0% of the Purchase Price (the "Deductible Amount"), and then only to the extent such Losses exceed, in the aggregate, the Deductible Amount. For the avoidance of doubt, indemnification for Losses arising from breaches of any of Sections 2.7(a)(v), 2.21(b)(xxi)-(xxiv) and 2.22(1)-(n) shall not be subject to either the De Minimis Amount or to the Deductible Amount, and all such Losses shall be indemnified beginning with the first dollar of Loss. Anything in this Agreement to the contrary notwithstanding, in no event shall Seller or GAC be required to indemnify Parent, Buyer, any Acquired Company or the Buyer Indemnified Parties for Losses pursuant to Section 7.1(a) in any amount exceeding 65% of the Purchase Price (the "Cap"); provided, that the Cap shall not apply to Seller's and GAC's requirement to indemnify Parent, Buyer, any Acquired Company or the Buyer Indemnified Parties for Losses pursuant to Section 7.1(a) with respect to a breach of the representations and warranties set forth in Sections 2.1, 2.2, 2.3, 2.7(a)(v), 2.21(b)(xxi)-(xxiv) or 2.22(1)-(n), and any indemnified Losses in respect of such representations and warranties shall not count against the Cap.

(b) None of the Seller Indemnified Parties shall be entitled to assert any right to indemnification under Section 7.2(a) until (i) each individual amount of Losses otherwise due the Seller Indemnified Party exceeds the De Minimis Amount (provided, that (X) the term "individual amount of Losses" shall mean each individual breach of a particular warranty and not the aggregation of individual breaches of a particular warranty into a single breach (e.g., if Buyer failed to disclose five contracts under a particular warranty, and the failure to disclose any one of those contracts would be a breach, then the five contracts together would be considered multiple breaches, of which each such undisclosed contract would be an "individual amount of Loss") and (Y) for purposes of the calculation of the Loss with respect to such individual breach, a series of separate Losses caused by or resulting from the same individual breach shall be aggregated (e.g., if an individual breach causes or results in two separate Losses of \$200,000 each, such Losses shall be aggregated to a sum of \$400,000 for purposes of determining whether the "Loss" with respect to such individual amount is less than \$250,000)) and (ii) the aggregate amount of all the Losses actually suffered by the Seller Indemnified Parties exceeds the Deductible Amount, and then only to the extent such Losses exceed, in the aggregate, the Deductible Amount. Anything in this Agreement to the contrary notwithstanding, in no event shall Buyer be required to indemnify Seller, GAC or the Seller Indemnified Parties for Losses pursuant to Section 7.2(a) in any amount exceeding the Cap; provided, however, that no such limitations (A) shall affect Parent's and Buyer's obligation to pay the Purchase Price or (B) apply to Parent's and Buyer's obligations to indemnify Seller, GAC or the Seller Indemnified Parties for Losses pursuant to Section 7.2(a) (solely with respect to a breach of the representations and warranties set forth in Sections 3.1 or 3.2).

(c) No party hereto shall be liable to the others for indirect, special, incidental, consequential or punitive damages claimed by such other party or parties, as the case may be, resulting from such first party's breach of its representations, warranties or covenants hereunder.

(d) No Buyer Indemnified Party shall be entitled to indemnification (i) with respect to any particular Loss to the extent specific provision or reserve for such matter is made in the June Financial Statements or in the notes thereto or in an Adjustment Memorandum, as applicable or (ii) with respect to any matter that has been decided by the Accounting Expert (and which is expressly addressed as having been decided in the written findings of the Accounting Expert).

(e) Each party shall have the right to retain copies of all documents delivered or made available by or to such party or its Affiliates in connection with the transactions contemplated hereby to the extent reasonably required for the purpose of defending any claim against it under this Agreement or enforcing its rights hereunder (including making any claims or counterclaims against third parties pursuant to Section 7.4).

#### Section 7.4 Indemnification Procedures.

(a) Procedures Relating to Indemnification of Third Party Claims. Except as otherwise provided in this Agreement, if any party (the "Indemnified Party") receives written notice of the commencement of any action or proceeding or the assertion of any claim by a third party or the imposition of any penalty or assessment for which indemnity may be sought under Section 7.1 or 7.2 (a "Third Party Claim"); and such Indemnified Party intends to seek indemnity pursuant to this Article VII, the Indemnified Party shall promptly provide the other party or parties, as applicable (the "Indemnifying Party") with written notice of such Third Party Claim, stating the nature, basis and the amount thereof, to the extent known, along with copies of the relevant documents evidencing such Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice will not relieve the Indemnifying Party from liability on account of this indemnification, except if and to the extent that the Indemnifying Party is actually prejudiced thereby. The Indemnifying Party will have thirty (30) days from receipt of any such notice of a Third Party Claim to give notice to assume the defense thereof. If notice to the effect set forth in the immediately preceding sentence is given by the Indemnifying Party, the Indemnifying Party will have the right to assume the defense of the Indemnified Party against the Third Party Claim with counsel of its choice. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof after notice to the Indemnified Party. So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (ii) the Indemnified Party will not file any papers or consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party and (iii) the Indemnifying Party will not (A) admit to any wrongdoing or (B) consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim to the extent such judgment or settlement provides for equitable relief, in each case, without the prior written consent of the Indemnified Party (such written consent will not be withheld or delayed unreasonably). The parties will use commercially reasonable efforts to minimize Losses from Third Party Claims and will act in good faith in responding to, defending against, settling or otherwise dealing with such claims. The parties will also cooperate in any such defense and give each other reasonable access to all information relevant thereto. Whether or not the Indemnifying Party has assumed the defense, such Indemnifying Party will not be obligated to indemnify the Indemnified Party hereunder for any settlement entered into or any judgment that was consented to without the Indemnifying Party's prior written consent. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim (and shall be liable for the reasonable fees and expenses of counsel incurred by the Indemnified Party in defending such Third Party Claim) if the Third Party Claim seeks an order, injunction or other equitable relief or relief for other than money damages against the Indemnified Party that the Indemnified Party reasonably determines, after conferring with its outside counsel, cannot be separated from any related claim for money damages. If such equitable relief or other relief portion of the Third Party Claim can be so separated from that for money damages,

the Indemnifying Party shall be entitled to assume the defense of the portion relating to money damages:

(b) Procedures for Non-Third Party Claims. Except as otherwise provided in this Agreement, the Indemnified Party will notify the Indemnifying Party in writing promptly of its discovery of any matter that does not involve a Third Party Claim being asserted against or sought to be collected from the Indemnified Party, giving rise to the claim of indemnity pursuant hereto. The failure so to notify the Indemnifying Party shall not relieve the Indemnifying Party from liability on account of this indemnification, except only if and to the extent that the Indemnifying Party is actually prejudiced thereby. The Indemnifying Party will have thirty (30) days from receipt of any such notice to give notice of dispute of the claim to the Indemnified Party. The Indemnified Party will reasonably cooperate and assist the Indemnifying Party in determining the validity of any claim for indemnity by the Indemnified Party and in otherwise resolving such matters. Such assistance and cooperation will include providing reasonable access to and copies of information, records and documents relating to such matters, furnishing employees to assist in the investigation, defense and resolution of such matters and providing legal and business assistance with respect to such matters. If the Indemnifying Party does not notify the Indemnified Party within such thirty (30) day period that the Indemnifying Party disputes its liability to the Indemnified Party under Section 7.1 or 7.2, such claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability of the Indemnifying Party under Section 7.1 or 7.2 and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand or, in the case of any notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of such claim (or such portion thereof) becomes finally determined.

(c) For purposes of this Article VII, all Losses (x) shall be computed net of (i) any Tax benefit resulting therefrom to the Indemnified Party, (ii) any amounts actually recovered by the Indemnified Party under insurance policies with respect thereto and (iii) any amounts actually recovered from third parties based on claims the Indemnified Party has against such third parties which reduce the Losses sustained by such Indemnified Party; provided, however, that, in all cases, the timing of the receipt or realization of insurance proceeds or Tax benefits or Tax costs or recoveries from third parties shall be taken into account in determining the amount of reduction of Losses that is not considered a purchase price adjustment, and (y) shall be increased to take account of any net Tax cost incurred by the Indemnified Party arising from the receipt of indemnity payments hereunder (grossed up for such increase).

(d) Each party shall cooperate with the other with respect to resolving any claim or liability with respect to which one party is obligated to indemnify the other party hereunder, including by using commercially reasonable efforts to mitigate or resolve any such claim or liability; provided, however, that such party shall not be required to make such efforts if they would be detrimental in any material respect to such party.

(e) Buyer and Parent agree that prior to any Buyer Indemnified Party submitting a claim for indemnification for Losses arising or resulting from or relating to

any breach of the representations set forth in any of (i) the second or fourth sentences of Section 2.7(a)(ii), (ii) clause (C) of the first sentence of Section 2.7(a)(iii) or (iii) the next to last sentence of Section 2.22(e) (collectively, the "SAP Reps")) pursuant to Section 7.1:

(A) the parties shall mutually agree upon an accounting professional with significant experience in the life insurance company accounting field (the "Reviewer"), or if the parties cannot mutually agree upon a Reviewer the parties will mutually request that the American Arbitration Association (the "AAA") select an appropriate reviewer for them (and the parties shall share equally any fees of the AAA and the Reviewer resulting from such request);

(B) Buyer shall submit to the Reviewer and Seller within 15 days after the selection of the Reviewer a written letter summarizing why it reasonably believes that there has been a breach of a SAP Rep by Seller or GAC;

(C) At its option, Seller may submit to the Reviewer and Buyer within a time period to be selected by the Reviewer (but in no event longer than 30 days after the selection of the Reviewer) a written letter summarizing its position in response to Buyer's letter;

(D) the Reviewer shall review the bases for the Buyer's claim that there has been a breach of a SAP Rep and shall within a reasonable time (but in no event more than 20 days after submission of any letter by Seller) issue a written statement (the "Reviewer Conclusion") stating whether the Reviewer believes that it is reasonably likely that there has been a breach by Seller or GAC of a SAP Rep.

If the Reviewer Conclusion states that the Reviewer believes that it is reasonably likely that there has been a breach by Seller or GAC of a SAP Rep, then the applicable Buyer Indemnified Party may submit its claim for indemnification for Losses arising or resulting from or relating to such breach pursuant to Section 7.1.

Section 7.5 Tax Indemnity. Notwithstanding anything in this Agreement to the contrary, Seller and GAC shall, jointly and severally, indemnify, defend and hold harmless the Buyer Indemnified Parties from (i) all liability for Taxes of the Acquired Companies with respect to any Pre-Closing Tax Period, (ii) all liability for Taxes of any person with whom any of the Acquired Companies or their Subsidiaries joins or has ever joined in filing any affiliated, consolidated, combined or unitary Tax Return prior to the Closing Date, (iii) all Losses with respect to the breaches of representations and warranties set forth in Sections 2.19, 2.21(b)(xvii) through 2.21(b)(xx), 2.22(c) and 2.22(d) and the covenants set forth in Sections 4.8, 4.10(f) and 4.10(g) and (iv) all liability for reasonable legal fees and expenses attributable to any item described in clauses (i) through (iii). It is agreed and acknowledged by the parties that for purposes of Seller and GAC's right to indemnification pursuant to clause (iii) of the preceding sentence of this Section 7.5, the representations and warranties of Seller and GAC set forth in Section 2.19 shall be deemed not qualified by any references therein to materiality generally or to whether or not any breach results or may result in a Material Adverse Effect. For the avoidance of doubt, the limitations set forth in Section 7.3 shall not apply to indemnification under this Section 7.5; provided, however, that no Buyer Indemnified Party shall be entitled to indemnification pursuant to this Section 7.5 (i) with respect to any Tax to the extent specific provision or reserve for such Tax is made in the June Financial Statements or in the notes thereto or in an Adjustment Memorandum, as applicable or (ii) with respect to any matter that has been decided by the Accounting Expert (and which is expressly addressed as having been decided in the written findings of the Accounting Expert).

Section 7.6 Survival and Time Limitation. The representations, warranties and other terms and provisions of this Agreement and any certificate delivered pursuant hereto shall survive the Closing of the transactions contemplated hereunder. Notwithstanding the foregoing, after Closing, any assertion by Parent or Buyer or any Buyer Indemnified Party that Seller or GAC is liable to Parent, Buyer or any Buyer Indemnified Party for indemnification under Section 7.1(a) of this Agreement must be made in writing and must be given to Seller and GAC (or not at all) on or prior to the 12 month anniversary of the Closing Date, except (a) for indemnification for matters addressed in Sections 2.7(a)(v), 2.18, 2.19, 2.20, 2.21(b)(xxi)-(xxiv), 2.22(1)-(n) and 7.5, which must be made in writing and must be given to Seller and GAC (or not at all) on or prior to the date that is ninety (90) days after the date on which the applicable statute of limitations expires with respect to the matters covered thereby and (b) for indemnification for breaches of the representations and warranties contained in Sections 2.1, 2.2 and 2.3, which must be made in writing and may be given to Seller and GAC at any time after the Closing Date without limitation. After Closing, any assertion by Seller or GAC or any Seller Indemnified Party that Parent or Buyer is liable to Seller, GAC or any Seller Indemnified Party for indemnification under Section 7.2(a) of this Agreement or the certificate delivered in respect of Section 5.2(a) of this Agreement must be made in writing and must be given to Buyer and Parent (or not at all) on or prior to the 12 month anniversary of the Closing Date, except for indemnification for breaches of the representations and warranties contained in Sections 3.1 and 3.2, which must be made in writing and may be given to Buyer and Parent at any time after the Closing Date without limitation.

Section 7.7 Sole and Exclusive Remedy. EXCEPT IN ALL CASES FOR CLAIMS OF, OR CAUSES OF ACTION ARISING FROM, FRAUD, BAD FAITH OR WILLFUL MISCONDUCT, FROM AND AFTER THE CLOSING, THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE VII SHALL BE THE SOLE AND EXCLUSIVE RIGHT AND REMEDY OF EACH PARTY (INCLUDING THE SELLER INDEMNIFIED PARTIES AND THE BUYER INDEMNIFIED PARTIES) (I) FOR ANY BREACH OF THE OTHER PARTY'S REPRESENTATIONS, WARRANTIES, COVENANTS, OR AGREEMENTS CONTAINED IN THIS AGREEMENT OR (II) OTHERWISE WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND THE PARTIES WAIVE THE RIGHT TO ALL OTHER REMEDIES; PROVIDED, HOWEVER, THAT NOTHING SET FORTH IN THIS SECTION 7.7 SHALL BE DEEMED TO PROHIBIT OR OTHERWISE LIMIT EITHER PARTY'S RIGHT AT ANY TIME BEFORE, ON OR AFTER THE CLOSING DATE, TO SEEK INJUNCTIVE OR EQUITABLE RELIEF FOR THE FAILURE OF THE OTHER PARTY TO PERFORM ANY COVENANT OR AGREEMENT SET FORTH HEREIN.

Section 7.8 Treatment of Indemnification Payments. All indemnification payments made pursuant to this Article VII shall be treated by the parties as adjustments to the Purchase Price unless otherwise required by applicable law.

## ARTICLE VIII. MISCELLANEOUS

Section 8.1 Amendment and Modification. This Agreement may be amended, modified or supplemented, only by a written agreement signed by each of the parties hereto.

Section 8.2 Waiver of Compliance; Consents. Any failure of Parent or Buyer, on the one hand, or Seller, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by Seller or Parent or Buyer, respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 8.2.

Section 8.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, by telecopier (with a confirmed receipt thereof) or registered or certified mail (postage prepaid, return receipt requested), and on the next Business Day when sent by overnight courier service, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent, to:

White Mountains Insurance Group, Ltd.  
80 South Main Street  
Hanover, NH 03755  
Attention: Robert Seelig, General Counsel  
Facsimile: 603-643-4592